

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

BARBARA HILDENBRAND,

Respondent.

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DOCKET NO. 07-3450-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice dated September 17, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent BARBARA HILDENBRAND that HUD was suspending her along with proposing her debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a five-year period from the date of her suspension. The suspension took immediate effect pursuant to the Notice. HUD also advised Respondent in the September 17, 2007, Notice that the proposed debarment and her immediate suspension, which was for a temporary period pending the completion of the debarment proceedings, were in accordance with the procedures set forth in 24 CFR part 24.¹ Further, the Notice informed Respondent that her proposed debarment was based upon her conviction in the United States District Court for the Northern District of Texas. Additionally, the Notice advised Respondent that her conviction constitutes adequate evidence on which to base her suspension in accordance with 24 CFR 24.700 and 705.

Respondent's conviction followed her guilty plea to two counts of Defrauding the Department of Housing and Urban Development and Aiding and Abetting in violation of 18 U.S.C. 1012 and 2. The allegations are set out in a thirty-six-count indictment handed down against Respondent and her codefendant. Respondent was the president of a non-profit organization, Community Housing Fund (CHF), which purchased houses from HUD through the Single Family Affordable Housing Program at a discount.

¹ The regulations formerly found at 24 CFR part 24 have been relocated and recodified at 2 CFR part 180. The regulations are substantively unchanged except as noted in the final rule effecting the recodification published on December 27, 2007 (72 FR 73484).

Respondent's codefendant operated a company, Ranscott Construction, Inc. (RCI), which Respondent used to perform repair work on the houses purchased by CHF from HUD.

In summary and in pertinent part, the indictment alleges, *inter alia*, that Respondent and her codefendant unlawfully conspired to falsely represent CHI as a non-profit organization, thus allowing CHI to participate in HUD's Single Family Affordable Housing Program (SFAHP) and obtain homes at a discount. The indictment further alleges that Respondent and her codefendant used RCI ostensibly to coordinate repair work on many of the houses purchased from HUD. According to the indictment, Respondent and her codefendant thereby stole, embezzled, or obtained by fraud or otherwise converted without authority in excess of \$5,000.00 from CHI bank accounts to RCI and falsely documented the stolen moneys as being related to repair costs incurred by RCI.

Specifically, Counts 2 and 3 of the indictment to which Respondent pleaded guilty charged that Respondent aided and abetted by her codefendant "having received compensation, rebates, and rewards by purchasing homes through HUD's Single Family Affordable Housing Program, did knowingly act with intent to defraud HUD . . . by stealing CHF funds for non-business related purchases and falsely claiming that portions of the payments were made for legitimate work and expenses incurred by [Respondent's codefendant] operating through the business RCI, in relation to" several identified homes.

For Respondent's conviction on her guilty plea to the offenses alleged in the two counts (Counts 2 and 3) of the indictment, Respondent was sentenced to 24 months in prison and placed on supervised release for one year. Additionally, Respondent was ordered to make restitution to HUD of \$672, 221.00 jointly and severally with her codefendant.

A hearing on Respondent's proposed debarment was held in Washington, D.C. on January 23, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present at the hearing with her representative, Frederick Douglas. Amy Brown, Esq. appeared on behalf of HUD.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of five years from September 17, 2007, the date of her suspension. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment and Suspension dated September 17, 2007.
- (2) A letter from Respondent to the Debarment Docket Clerk dated October 1, 2007, in which, *inter alia*, Respondent appealed her proposed debarment and suspension and

requested that “any suspension and/or debarment proceedings be postponed until the judicial process has been completed.”

- (3) The Government’s Opposition to Respondent’s Motion to Stay Hearing filed November 2, 2007.
- (4) An Order Denying Request for Stay filed November 16, 2007.
- (5) A thirty-six-count indictment filed October 5, 2004, in the United States District Court for the Northern District of Texas, charging Respondent and her codefendant with the commission of several crimes.
- (6) The plea agreement filed June 13, 2007, in the United States District Court for the Northern District of Texas in which Respondent agreed to plead guilty to the offenses alleged in two counts of the indictment.
- (7) The Judgment in a Criminal Case entered against Respondent, filed February 2, 2007, in the United States District Court for the Northern District of Texas.
- (8) The Government’s Brief in Support of a Five-Year Debarment, filed December 20, 2007 (including all attachments and exhibits thereto).
- (9) A January 9, 2008, letter from Respondent, noting her objections to arguments propounded in the Government’s Brief, including eighteen “supporting documents” attached thereto, in particular the Factual Resume filed June 13, 2005; two letters dated November 20, 2006, from Carol Cooper and Sandra L. Maxfield, respectively, addressed to Judge Barefoot Sanders and Assistant United States Attorney Tammy Reno; letter of February 7, 2006, from Dr. Gary Lacefield of Risk Mitigation Group to Respondent’s counsel; letter dated February 20, 2002, from Ben Johnson, Deputy Director of the Denver Homeownership Center.
- (10) Two letters from Ray Price dated January 5, 2008, and January 15, 2008, respectively, addressed to the Department [sic] Docket Clerk.
- (11) A letter dated January 28, 2008, from Respondent addressed to the Debarment Docket Clerk attaching thereto Defendant’s Objection to Pre-Sentence Report; Respondent’s Supplemental Objections to the Presentence Report, filed January 5, 2006; The Brief for the Appellant and the Reply Brief of the Appellants, filed July 27, 2007, and November 16, 2007, respectively, in the United States Court of Appeals for the 5th Circuit, appealing her criminal conviction.
- (12) The tape recording of the January 23, 2008, hearing.

HUD's Arguments

HUD argues that CHF was provided a discount by the Department as an approved non-profit for the purchase of houses from HUD. CHF’s involvement in the HUD program was a covered transaction. Respondent therefore was a participant, as defined in 2 CFR 180.980, because as president of CHF she represented the company that engaged in the covered transactions. Thus, HUD argues, Respondent is subject to the debarment and suspension regulations both as someone who has participated in a covered transaction and as someone who is reasonably expected to do so in the future.

The government also argues that Respondent’s conviction for defrauding HUD and aiding and abetting provides the basis for her debarment in accordance with 2 CFR 180.800. Further, the government has met its burden of demonstrating that cause exists

for Respondent's debarment because, as provided in 2 CFR 180.800(a)(1), Respondent's "conviction constitutes explicit grounds for debarment." Additionally, the government argues that Respondent's criminal acts indicate a lack of business integrity or business honesty that seriously affects her present responsibility, thus the public interest requires her debarment.² See 2 CFR 180.125(c) (formerly codified at 24 CFR 24.110(c)).

In support of its action to debar Respondent, the government argues that a five-year term of debarment is warranted because of Respondent's abuse of her position in CHF and in "light of the nature of the Respondent's crimes and the significant amount of restitution" she was ordered to pay. The government also contends "there are no mitigating circumstances surrounding Respondent's fraudulent acts." Respondent "was a willing participant in a scheme to defraud HUD . . . [who] has yet to take responsibility for her actions." Respondent's only defense, according to the government, is that her conviction is on appeal, "which is not in itself a defense or a mitigating factor."

For the foregoing reasons, the government concludes that a "five-year debarment is necessary to protect the Department and the public interest from Respondent."

Respondent's Arguments

Respondent argues that there is no evidence to support her guilty plea. Moreover, she committed no crime; consequently, she does not accept responsibility for actions that were not criminal. Respondent testified that she pleaded guilty to the two counts in the indictment because the Department of Justice was threatening to seek a fifteen-year sentence if she took her case to trial.

Respondent takes issue with the government's assertion that CHF's purchase of houses from HUD involved nonprocurement transactions. Respondent rejects the government argument that "A nonprocurement transaction, which includes 'grants' and 'payments for specified uses'" applies in this case. Respondent argues that "[t]he only money flowing between CHF and HUD were proceeds of private bank loans that CHF used to pay for the houses purchased from HUD. . . .[and] the purchases specifically did not involve financing from HUD."

Respondent testified that payments to her codefendant's company were allocated to repairs on different houses months after completion of the job, but the payments were nonetheless legitimate. Respondent also challenges the government's assertion that her "conviction constitutes explicit grounds for debarment," arguing that, as she has raised on appeal, "the conviction is based on two key elements which have not been met."

Respondent rejects the government's charge that her conduct shows a "lack of honesty and business integrity" and responsibility. Respondent argues that the charge is belied by her "recent and consistent actions in protecting the mortgages that are [her] responsibility," such that "[d]uring the last seven years of this persecution, [she] has

² The government raises some of the same arguments summarized here to support its action in suspending Respondent.

made sure that every mortgage payment was current.” Respondent testified that she continues to be president of CHF.

Respondent further raises in her defense, the opinions of Dr. Gary Lacefield, Fred Douglas, and Ray Price³ that, in effect, her prosecution was unwarranted and that “CHF was in complete compliance with all program regulations.”⁴ Respondent argues that “[u]nder 24 CFR 24.605 [now recodified at 2 CFR 180.605] a debarring official must conclude, based upon a preponderance of the evidence, that the person has engaged in conduct that warrants debarment.” Respondent thus implicitly argues that in this matter the Debarring Official can not draw that conclusion because of the “government[t’s] acknowledging, after the guilty plea, that the circumstances upon which the guilty plea were based do not exist.”

In her oral testimony, Respondent emphasized that HUD did not give CHF any money and that CHF paid the contractor less than HUD approved for repairs. Respondent’s representative, Fred Douglas, also testified that “no physical cash exchanged hands” between HUD and CHF and that HUD has not paid any claim from HUD. In this regard, Respondent argues that the amount of restitution ordered by the court is in error and remains an issue on appeal.

Respondent also would like the Debarring Official to consider as part of her contention that there is no basis for the debarment action, her objections to the Presentence Report, and the two issues presented in the appeal of her conviction. In the appeal, Respondent contends that a person working for a non-profit corporation in HUD’s SFAHP, where the non-profit receives a discount on the list price of a property, does not receive “compensation, rebate, or reward” within the meaning of 18 U.S.C. 1012, the statute under which she was convicted. The other issue on appeal is whether the factual basis of Respondent’s plea was sufficient to show that Respondent acted with the intent to defeat HUD’s purposes.

Findings of Fact

1. Respondent was the president of CHF at the time CHF purchased houses from HUD at a discounted rate pursuant to the Single Family Affordable Housing Program.
2. Respondent continues in the position of president of CHF.
3. Respondent was charged in a thirty-six-count indictment that alleged, *inter alia*, Respondent used her codefendant ostensibly to coordinate the repair work on houses bought under the Single Family Affordable Housing Program, and made illegal payments therefor.

³ The opinions and letters from these three writers can be found as attachments to Respondent’s January 9, 2008, letter addressed to the Debarment Docket Clerk.

⁴ See Respondent’s January 9, 2008, unpaginated letter at 3. See also, the January 5, 2008, Ray Price letter at 2 that “Hildenbrand followed all HUD rules and regulation,” and the Douglas June 8, 2005, letter at 1, wherein Douglas writes that “After speaking with many current HUD officials, I have not found anyone with an operational or compliance problem with CHF.”

4. Respondent's prosecution and conviction resulted from her fraudulent actions with respect to two of the houses that were purchased at a discount under the Single Family Affordable Housing Program.
5. In connection with the houses, Respondent withdrew money from CHF's bank accounts.
6. Respondent's codefendant was the beneficiary of these withdrawals.
7. Respondent claimed that portions of the withdrawals were made for legitimate repair work and expenses incurred by her codefendant's company.
8. Part of the funds that Respondent made available to her codefendant was used not to repair the houses purchased by CHF but for non-business related purposes.
9. Respondent pleaded guilty and was convicted on two counts in the indictment.
10. In her plea, Respondent agreed and stipulated that with respect to two houses, she received over \$20,000.00 in discounts from HUD with the intent to defraud HUD and with the intent unlawfully to defeat its purposes.
11. Respondent agreed and stipulated that by using CHF money as described in the indictment, she and her codefendant were defrauding HUD and defeating the purposes of the Single Family Affordable Housing Program.
12. Respondent agreed that she made a series of illegal payments to her codefendant, though the true amount is in dispute.
13. Respondent's conviction resulted in her being sentenced to twenty-four months in prison, placed on supervised release for one year, and ordered to make restitution to HUD in the amount of \$672,221.00.
14. Respondent has appealed her conviction and her appeal is pending.
15. Respondent does not accept responsibility for her actions, insisting that she did nothing wrong.

Conclusions

Based on the above Findings of Fact, I have made the following conclusions:


1. CHF, by virtue of its involvement in the Single Family Affordable Housing Program, participated in covered transactions.
2. Respondent as president of CHF was a participant in a covered transaction as defined in 2 CFR part 180.200 (formerly 24 CFR 24.200).
3. Respondent's criminal conviction serves as the basis for her debarment.
4. Pursuant to 2 CFR 180.800 (formerly 24 CFR 24.800), a conviction for fraud, *inter alia*, is a cause for debarment.
5. It is well settled that a debarment hearing is not the proper forum for a collateral attack on a debarred person's conviction. *See In the Matter of Luther D. White, d/b/a B&G Enterprise*. HUDBCA No. 87-2463-D57 (1988).
6. Pursuant to 2 CFR 180.850, if a proposed debarment is based upon a conviction, the standard of proof, i.e., preponderance of the evidence, is met.
7. Respondent has appealed her conviction.
8. Respondent's appeal of her conviction cannot be used as a bar to her debarment proceeding. *See generally*, 2CFR 180.860.

9. Pursuant to 2 CFR 180.880(b), a debarment may be terminated based on "a reversal of the conviction . . . upon which [the] debarment was based."
10. Respondent has expressed no remorse nor offered any factors in mitigation of her wrongful conduct. See 2 CFR 180.860.
11. Respondent's actions that led to her criminal conviction raise grave doubts with respect to her business integrity and personal honesty.
12. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
13. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv) (formerly codified at 24 CFR CFR 24.870(b)(2)(i) through (b)(2)(iv)), to debar Respondent for a period of five years from the date of her suspension, September 17, 2007. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception." See 2 CFR 180.870(b)(2)(iv).

Dated: March 3, 2008


Henry S. Czauski
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2008, a true copy of the
DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.

Tammie M. Parshall

Tammie M. Parshall
Debarment Docket Clerk

HAND-CARRIED

Mortimer F. Coward, Esq.
Debarring Official's Designee

Maura Malone, Esq.
Amy Brown, Esq.
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FIRST CLASS MAIL

Barbara Hildenbrand

